STATE OF CALIFORNIA GAVIN NEWSOM, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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Ratesetting

TO PARTIES OF RECORD IN APPLICATION 21-11-005:

This is the proposed decision of Administrative Law Judge Patricia B. Miles. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's January 12, 2023 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4).

/s/ MICHELLE COOKE
Michelle Cooke
Acting Chief Administrative Law Judge

MLC:jnf
Attachment

Decision **PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE PATRICIA B. MILES (Mailed 12/2/2022)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of Sierra Telephone Company, Inc. (U1016C) to Modify Intrastate Revenue Requirement and Rate Design and Adjust Selected Rates.	Application 21-11-005

DECISION APPROVING REVENUE REQUIREMENT, RATE DESIGN AND SELECTED RATES FOR THE SIERRA TELEPHONE CO. FOR TEST YEAR 2023

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DECISION APPROVING REVENUE REQUIREMENT, RATE DESIGN AND SELECTED RATES FOR THE SIERRA TELEPHONE COMPANY FOR TEST YEAR 2023

Summary

This decision authorizes a revenue requirement for Sierra Telephone Company, Inc. (Sierra), as summarized in the following table, and as discussed in greater detail throughout this decision:

Rate Case Item	Sierra's Proposal Amount	Amount Adopted by this Decision
Operating Revenues	$23,639,114	$20,162,135
Operating Expenses	$17,341,312	$16,113,043
Total Rate Base	$49,688,395	$34,340,396
Authorized Rate of Return	9.22%	9.22%
Return on Rate Base	$4,581,270	$3,166,185
Revenue Requirement	$23,639,114	$20,162,135

This decision adopts an overall intrastate revenue requirement of $20,162,135 for Test Year 2023, including support of $7,225,106 from the California High-Cost Fund-A. Upon adoption of this decision, the basic rates for Sierra's residential customers shall be $26.50 (or approximately $37.27 inclusive of surcharges, fees and taxes), and the rates for Sierra's business customers will be set at $43.25 (exclusive of surcharges, fees and taxes). The rate for Sierra's residential customers is within the $30 to $40 range for small telephone corporations that the Commission set in Decision 21-06-004, is deemed just and reasonable and reasonably comparable to rates charged to customers of urban telephone corporations and should be adopted.

This proceeding is closed.

1. Background

1.2. The Parties

1.2.1. Sierra Telephone Company

Sierra Telephone Company, Inc. (Sierra) is a California corporation whose principal place of business is 49150 Road 462, Oakhurst, CA 93644. Sierra owns and operates a telephone system that provides services to approximately 15,300 access lines in three telephone exchanges: Coarsegold, Mariposa and Raymond. Its telephone system includes facilities for interconnection to a public switched telephone network and consists of both underground and aerial cable and lines, radio equipment, central office equipment, land and buildings.[1]

1.2.2. Public Advocates

The Public Advocates Office of the Commission (Cal Advocates) is an independent organization within the California Public Utilities Commission (Commission) which advocates on behalf of ratepayers statewide. Its statutory mission is to obtain the lowest possible utility rates for customers consistent with safe, reliable service and the state's environmental goals. Cal Advocates also strives to insure that no one is left behind and that all communities have access to safe and affordable electric, gas, water, and communication services including broadband service.

2. Procedural History

Sierra filed its general rate case (GRC) Application (A.) 21-11-005 on November 1, 2021 (Application), requesting review of its intrastate revenue requirement and rate design.[2] The application includes a proposal to eliminate "party line" service and to modify Sierra's basic single-line residential and

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[1] *See* Application at 29.

[2] The Commission approved Sierra's last rate case for Test Year (TY) 2018, in D.17-11-016 on November 30, 2017.

business rates to include customer calling features[3] and voicemail into its existing basic residential of $25.00 and its single-line business rate of $39.32. Sierra served direct testimony from seven witnesses in support of its Application.[4]

The Application appeared on the Commission's Daily Calendar on November 17, 2021. On November 18, 2021, in Resolution ALJ 176-3497, the Commission preliminarily designated the proceeding as ratesetting and concluded that hearings would be necessary.

On December 1, 2021, Cal Advocates filed a protest to Sierra's application contending, among other things, that Sierra's corporate and operating expense caps may be overstated; that Sierra's depreciation expenses may be overstated; that there is a dispute about whether Sierra has complied with D.21-06-004; that there is an issue whether Sierra's California High Cost Fund-A (CHCF-A) draw is reasonable, and whether elements of Sierra's rate design are reasonable and comply with Decision (D.)21-04-005. Sierra filed a reply on December 13, 2021.

A prehearing conference (PHC) was held on January 18, 2022. Based on the application, Cal Advocates' protest, Sierra's response to the protest, the parties' PHC statements and discussion at the PHC, the assigned Commissioner issued the Scoping Memorandum and Ruling on March 1, 2022 setting the

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[3] *See* Application at 30-31. Sierra proposes to offer the following custom calling features: Call Forwarding, Call Waiting, Three Way Calling, Speed Dialing, Distinctive Ring, Toll Restriction, Call Blocking, Caller ID, Automatic Callback, Call Return, Anonymous Call Rejection, Selective Call Rejection, Calling Name and Number, Call Trace, Repeat Dialing and Find Me Service.

[4] Sierra served prepared testimony by (1) Cynthia Huber, Sierra's President (2) Michael Montgomery, Sierra's Operations Manager (3) Robert Griffin, Sierra's Vice President and General Manager (4) Daniel Rule, Sierra's Business Development and Customer Care Manager (5) Chad Duval, Sierra's cost consultant and regulatory policy expert (6) Dale Lehman, an economist and expert on the affordability of utility service, and (7) Larry Thompson, an engineer and network design expert.

following issues for hearing, each of which will be discussed below in this decision:

a. What level of revenue requirement (including corporate and operating expenses, depreciation expenses, rate base and new plant additions and tax liabilities) is necessary to provide Sierra with revenues and earnings sufficient to allow it to operate in a manner that allows it to deliver safe, reliable, high-quality voice communication services, which comply with Section 451 and General Order 133D?

b. What are the reasonable projections for local network service end user rate, end user revenues, High-Cost Loop Support revenues, intercarrier compensation/access revenues, miscellaneous revenues, broadband revenue imputation and CHCF-A support?

c. What end-user rates are just and reasonable for Sierra's customers and reasonably comparable to rates charged to customers of urban telephone corporations per Public Utilities (Pub. Util.) Code Section 275.6(c)(3)?

d. What are the projected retail broadband revenues of Sierra and its affiliate internet service provider (ISP) and what amount of the retail revenues of the ISP are subject to imputation as part of the determination of rate design and CHCF-A support as required by D.21-04-005?

e. Is Sierra's proposed CHCF-A draw/subsidy for Test Year (TY) 2023 appropriate?

f. Are Sierra's proposed corporate and operating expenses within the Federal Communications Commission corporate and operating expense caps adopted in D.21-06-004? What does D.21-06-004 require of Sierra with respect to discovery related to corporate and operating expenses?

g. Are the proposed plant improvements necessary for providing safe, reliable, and high-quality voice and broadband services?

h. Does the application raise issues pertinent to the CPUC's Environmental Social Justice Action Plan (ESJAP), and if so, whether the objectives of the ESJAP are met?

A virtual public participation hearing (PPH)[5] was held on April 11, 2022. Cal Advocates filed opening testimony on May 13, 2022.[6] Sierra filed rebuttal testimony on June 24, 2022.

Sierra and Cal Advocates exchanged extensive discovery in the form of detailed data requests. Evidentiary hearings (EH) were held virtually on July 27, 28, 29 and August 1, 2022. The parties filed Opening Briefs on September 6, 2022. Reply briefs were filed on September 30, 2022.

2.1. Customer Notice – Rule 3.2

As required by Rule 3.2,[7] Sierra complied with the Commission's customer notice requirements by timely notifying its customers on November 19, 2021 (by bill inserts or by electronic link for customers who receive bills electronically) of the proposed increases to its services. Sierra also published Notice of its Application (such notice duly approved by the Commission's Public Advisor's Office) in the Mariposa Gazette and Miner, a newspaper of general circulation, on November 25, 2021. Sierra filed its Notice of Compliance with Rule 3.2 on December 6, 2021.

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[5] A PPH is not a formal hearing at which evidence is taken into the record. However, it provides an opportunity for members of the public to offer comments to the Administrative Law Judge (ALJ) about the quality of service by Sierra as well as any other issues that may be of concern to the communities that Sierra serves.

[6] Cal Advocates served prepared testimony by James Ahlstedt, Bixia Ye and Benny Corona.

[7] All references to Rules are to the Commission's Rules of Practice and Procedure.

3. Legal Policy Authority for this General Rate Case (GRC)

Pub. Util. Code § 451 provides that public utilities may demand and receive only just and reasonable charges, and must provide "adequate, efficient, just and reasonable service" in a way that promotes the "safety, health, comfort, and convenience of [their] patrons, employees and the public." Pub. Util. Code § 454 prohibits public utilities from making rate changes until they have made a showing before the Commission and the Commission has made a finding that the new rates are justified. Responsibility for fixing rates is placed with the Commission, as "the primary purpose of the Public Utilities Act is to insure the public adequate service as [just and] reasonable rates without discrimination…."[8] Further, California has long recognized that "the commission has the power to prevent a utility from passing on to the ratepayers unreasonable costs for materials and services by disallowing expenditures that the commission finds unreasonable."[9] Accordingly, our task is to determine what is just and reasonable, and disallow costs that are found to be unjust or unreasonable.

4. Components of Revenue Requirements

In its application, Sierra seeks a 125.85 percent increase[10] over the rate base established in Sierra's last rate case, which it says is driven by the critical need for additional investment in the multi-use network to ensure long-term reliability and advance the broadband capabilities of the network to meet current and foreseeable broadband speed requirements. Sierra is pursuing plant additions to

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[8] Pacific Tel. & Tel. Co. v. Public Utilities Com. (1950) 34 Cal.2d 822, 826 [215 P.2d 441] (citations omitted).

[9] Pacific Tel. & Tel. Co. v. Public Utilities Com. (1965) 62 Cal.2d 634, 647 [401 P.2d 353, 361]. (*See*, Pub. Util. Code § 728.)

[10] Sierra's rate base for TY 2018, was $22,000,000.

achieve a Fiber to the Premises ("FTTP") architecture, which will be required for Sierra to meet the Federal Communications Commission ("FCC") speed standard of 25 Megabits per second ("Mbps") download and 3 Mbps upload throughout its service territory, and to position the company to meet anticipated 100 Mbps standards and beyond.[11]

Sierra's proposed rate design includes the five categories of regulated revenue used in intrastate ratemaking, consistent with Commission precedent over the past three decades: (1) $5,624,143 in local network services revenue from Sierra's end user customers based on anticipated demand at current rates; (2) $250,186 in intrastate switched and special access; (3) $3,886,647 in High Cost Loop Support ("HCLS"), forecasted by applying the FCC's algorithm in 47 C.F.R. Section 54.1300, et seq. to the best available information regarding the inputs to that formula; (4) $714,139 in miscellaneous revenues classified as intrastate; and (5) $13,164,028 in CHCF-A, prior to applying broadband imputation.[12]

As Sierra correctly notes, revenue requirement is a measurement of cost, reflecting the amount that a telephone corporation requires in order to recover its "reasonable expenses and tax liabilities and earn a reasonable rate of return on its rate base."[13] In the case of small telephone corporations such as Sierra, the Commission has stated that rate base means the value of plant and equipment that is reasonably necessary to provide regulated voice services and access to advanced services, with the small telephone company entitled to a fair

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[11] *See* Application at 3.

[12] *See* Application at 4; updated to reflect Sierra Reply Brief, Appendix A, dated September 30, 2022.

[13] *See* Pub. Util. Code Section 275.6(b)(5) and Sierra September 6, 2022, Opening Brief at 15, citing Calaveras Telephone Co. v. Pub. Util. Comm'n, 39 Cal.App.5th 972, 976 (2019).

opportunity to earn a reasonable rate of return on that value.[14] The Commission will evaluate the operating expenses, including taxes and a fair return on the company's investments – which are determined by multiplying its authorized rate of return by the value of property devoted to public use.

4.1. Local Network Services/Operating Revenues

Sierra proposes no increases to the basic residential and business rates ($25.00 and $39.32 respectively) set by the Commission during its previous GRC for TY 2018. Additionally, Sierra proposes to eliminate tariffs for all of its custom calling and voice mail services, noting that many custom calling features will be useful in the event of emergency situations. Sierra cites the economic vulnerability of its residential customers and small businesses who have been impacted by recent wildfires and are struggling to survive poor economic conditions in the wake of the pandemic.[15] Sierra notes that its basic residential rate of $25 translates into an all-inclusive basic service rate of $35.77, which Sierra says already falls above the midpoint of the modified "range of reasonableness" in D.21-06-004.

Sierra expresses concern that because its customer base has middle and low-income demographics, increasing rates higher than Sierra's current all-inclusive rate would likely drive significant numbers of customers off the network, thereby putting further rate pressure on the customers who remain and on other funding sources like the CHCF-A.[16] Sierra says that the local economy

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14 *See* Pub. Util. Code Section 275.6(b)(2).

15 *See* Application at 20; STC-11, Lehman Opening Testimony at 8-9, 17; and STC-4, Rule Opening Testimony at 15-16.

16 *See* Application at 20, citing STC-4, Opening Testimony of Daniel Rule at 15-16.

in the communities it serves is not strong and local businesses are still struggling to recover from the COVID-19 pandemic.[17]

Cal Advocates proposes a ten percent increase in Sierra's residential and business rates. This would result in a residential service rate of $27.50 and a basic business rate of $43.25.[18]

Cal Advocates agrees with Sierra that residential customers should be offered custom calling and voice mail services at no additional charge, which will contribute toward public safety in an area, such as the communities that Sierra serves, which are prone to fire hazard. Cal Advocates argues that its proposed increases are reasonable considering that the residential rate would still result in a rate less than the weighted average residential rate of $29.77 charged by urban carriers such as AT&T, Frontier and Consolidated, and will still be within the range of reasonableness set by D.21-06-004. Additionally, the recommended increase of ten percent for residential and business customers compares favorably to the cumulative inflation rate of twelve percent since 2018.[19]

Sierra offers only flat rate basic business service. Cal Advocates contends that a business rate increase from $39.32 to $43.25 is reasonably comparable to rates charged by customers of urban telephone corporations, as required by Pub. Util. Code § 275.6.

At its present $25.00 basic residential rate, Sierra's local network services revenues are approximately $6,247,021. We cannot justify Sierra's proposal to forego any price increase, as this would essentially keep 2018 rates in effect for

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[17] *See* Application at 16, citing STC-10, Opening Testimony of Dale Lehman at 3, 4, 8, 15. n

[18] *See* Exh. PAO-1 Cal Advocates Opening Testimony Regarding Sierra's Revenues and Rate Design, Broadband Revenue Imputation, and Results of Operations at 2.

[19] *See* Exh. PAO-1 Cal Advocates Opening Testimony at 1-15.

ten years (*i.e.*, by Sierra's next GRC for TY 2028). A ten percent increase in the basic residential rate from $25.00 to $27.50 per month, would increase Sierra's local network services revenues by $356,244 to a total of $6,603,265.

A ten percent or $2.50 increase in Sierra's basic residential rate is clearly not excessive or unreasonable. However, we are persuaded that Sierra's concerns about the income demographics of its customers, the ongoing financial challenges within the community due to recent fires, as well as effects of the pandemic warrant mitigation. For this reason, we are willing to adopt a compromise increase of $1.50 (a six percent increase), which will increase basic residential rates to $26.50, and increase Sierra's local network services revenues by $213,744 to a total of $6,460,765. This would reduce Sierra's CHCF-A draw by a corresponding $213,744.

We accept Cal Advocates proposal to increase the basic business rate to $43.25.

4.1.1. Custom Calling Features

As noted above, Sierra proposes to eliminate tariffs for its custom calling and voicemail services, arguing that its custom calling and voicemail features are valuable to its customers as safety features.

Sierra proposes to offer the following custom calling features as part of basic rate without any cost increase: Call Forwarding, Call Waiting, Three Way Calling, Speed Dialing, Distinctive Ring, Toll Restriction, Call Blocking, Caller ID, Automatic Callback, Call Return, Anonymous Call Rejection, Selective Call Rejection, Calling Name and Number, Call Trace, Repeat Dialing and Find Me Service.

Cal Advocates proposes to include the custom calling features and voicemail, but as part of increased basic residential and business local exchange rates of $27.50 and $43.25, respectively.

As noted in Section 4.1 above, we adopt a rate increase of $1.50 for basic residential service and $3.93 for basic business service. As part of this modest increase, we recommend that Sierra include the following custom calling features as part of basic rate for residential service and business service: Call Waiting, Call Forwarding[20] and Economy Voice Mailbox services at no charge for its customers. Other Custom Calling Features such as Three Way Calling, Call Rejection, etc. may be offered at additional charge, should customers desire them.

4.1.2. Elimination of Party Line Service

Sierra proposes to discontinue its "party line" service, which it says is not widely utilized. Sierra has only 54 customers currently on this service, and all of these customers can be converted to Sierra's basic flat-rate residential service.[21] It describes party line service as a relic of the early days of telephone service, where facilities did not exist to provide a line to every location. Facilities limitations no longer exist, and Sierra argues that "party line" service may even present public safety issues by enhancing the possibility that lines are unavailable when they are needed most—in an emergency or during a disaster.

Sierra notes that in 2010, the Commission authorized Sierra to "freeze" and "grandfather" party line service in preparation for discontinuance of this service. Sierra requests that the Commission permit it to terminate the service, following

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[20] Call Forwarding services included in Basic Rate are: Call Forwarding - Variable, Call Forwarding – Busy and No Answer, and Call Forwarding – Remote Access.

[21] *See* Sierra Opening Brief at 67.

proper notice to existing customers that they will be converted to flat rate service at the applicable rates.

Cal Advocates has expressed no opposition to this request. Accordingly, we agree that Sierra may discontinue party-line services.

4.1.3. Subscription Forecast

The subscribership forecast impacts revenue forecasts and, in turn, potential contributions from the CHCF-A.

Sierra proposes forecasting subscribership by using a "five-year average" change in subscribers between 2016 and 2021. However, for 2021, Sierra uses five months of annualized 2021 data to estimate subscribership for 2021. Sierra then uses the average to forecast the number of subscribers in 2022 and TY 2023.

Cal Advocates proposes to incorporate end of year 2021 subscribership data into the five-year average to forecast Sierra's TY 2023 subscribership. It argues that using actual 2021 subscriber data will provide a more accurate forecast. Cal Advocates notes that Sierra's subscribership forecast model causes variations in the five-year average which Cal Advocates says impacts the accuracy of Sierra's subscribership for TY 2023.

We are persuaded that Cal Advocates' proposal is correct. Using actual 2021 subscribership data is a reasonable and more favorable basis upon which to forecast TY 2023 subscribership than using Sierra's five months of "annualized" 2021 data.

At current rates, calculating Sierra's TY 2023 subscribership using actual 2021 subscribership data results in $15,900 less revenue for basic residential service, but $66,058 more revenue for basic business service in TY 2023. At current rates, this ultimately provides Sierra with $81,659 more revenue for TY 2023. [22]

4.2. High-Cost Loop Support

The parties present a common proposal for Sierra's HCLS calculation, which is to use the figure from NECA's anticipated October 2022 "submission of information" as the HCLS amount in the 2023 TY rate design.[23] The October 2022 HCLS figure is $4,401,576, which will be used to calculate CHCF-A subsidies for TY 2023.[24]

4.3. Miscellaneous Revenues

Cal Advocates argues that the Commission should clarify its reporting requirements for Non-Regulated Miscellaneous Revenues.[25] In D.21-06-004, we determined that the standards set forth in the Federal Uniform System of Accounts, 47 C.F.R. Section 32.5200 Miscellaneous Revenue and NECA Reporting Guideline 8.3 should be applied in GRCs such as this regarding the reporting and treatment of miscellaneous revenues, including revenues from licenses, leases, and other uses. Small LECS such as Sierra must report all regulated and non-regulated miscellaneous revenues in their GRC applications, with regulated licensing and leasing revenues accounted for using one of the two options in NECA Reporting Guideline 8.3 and non-regulated licensing, leasing, and other use revenues disclosed.[26] Sierra responds to Cal Advocates that its miscellaneous figures are complete and undisputed and within the scope

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[22] *See* Exh. PAO-1, Cal Advocates Opening Testimony (Ahlstedt) at 1-22 to 1-24.

[23] *See* Sierra Opening Brief at 69.

[24] *See* https://www.neca.org/docs/default-source/public---usf/current-results/2022/appendixe-2022.pdf?sfvrsn=c3881dc1_2

[25] *See* Opening Brief of Public Advocates at 22-23.

[26] D.21-06-004 at 19-20 and OP 4 at 42.

of the applicable federal rule[27] and that no clarification is needed and that, in any event, it would be improper to do so here.[28] We agree that a GRC decision for a single company is not the proper place to clarify this reporting requirement.

5. Expenses

Sierra summarizes computation of its "revenue requirement" as:

Revenue Requirement = Operating Expenses + (Rate Base x Cost of Capital) + Tax[29] Sierra discloses that its corporate expenses and overall operating expense are governed by parameters set forth in D.21-06-004.[30]

5.1. Operating Expenses

Operating expenses include four major expense groups: plant specific operations, plant non-specific operations, customer operations, and corporate operations (corporate expenses). During the Commission's GRC review process, staff examines all aspects of operating expenses. In D.21-06-004, the Commission explained that it uses FCC's operating expense caps as a rational mechanism for calculating and determining a reasonable amount of operating expenses for carriers drawing from the CHCF-A program. The Commission noted that the FCC uses its operating expense cap analysis to determine the level of HCLS, and that the financial data used to determine federal loop support is similar to the type of information the Commission uses for its GRC review and analysis and can be used to derive intrastate operating expenses.[31] NECA calculates the FCC's operating expense cap for each carrier by using a regression model, which

[27] *See* Sierra Opening Brief at 70-71.

[28] *See* Sierra Opening Brief at 92-94; *see also* Sierra Reply Brief at 36-37.

[29] *See* Application at 11.

[30] *See* "Decision Addressing Select GRC-Related Matters of the Small Incumbent Local Exchange Carriers," dated June 3, 2021 in Rulemaking (R.) 11-11-007.

[31] *See* D.21-06-004 at 26.

generates an annual operating expense per location plus 1.5 standard deviations (defined as the mean standard error of the regression) multiplied by the number of locations. The regression model is based on housing units (locations) and density and is described in detail in 47 CFR Section 54.303(a)(1) of the FCC's rules.

Sierra indicates that it has calculated its corporate expenses and overall operating expenses subject to the limitations set forth in 47 CFR Section 54.303(a)(1) of the FCC's rules.

5.1.1. Corporate and Operating Expense Caps

In D.21-06-004, the Commission affirmed the use of the FCC's corporate expense cap mechanism for calculating and determining a reasonable level of corporate expenses for telecommunications carriers drawing from CHCF-A.[32] The corporate expense cap is calculated based, in part, on the number of active loops and inflation factors.[33] All corporate expenses under the FCC corporate expense cap are considered reasonable, however, expenses over the cap are considered unreasonable and not eligible for recovery.[34] The Commission explained that its intent in adopting the FCC's corporate expense for small telecommunications carriers, was to determine how the CHCF-A program can more efficiently and effectively meet its stated goals of providing affordable, widely available, safe, reliable and high quality communications services for rural areas of the state. The Commission stated that adopting a uniform standard for determining a reasonable level of corporate operations expenses for

32 *See* D.21-06-004 at 23.

33 Sierra and Cal Advocate agree that Sierra has 15,624 active loops.

34 *See* D.21-06-004 at 24, where the Commission eliminated the rebuttable presumption previously allowed in D.14-12-084 and clarified that rate case litigation expense is subject to the corporate expense cap and must be recorded in FCC Account 6720.

carriers receiving subsidies from the CHCF-A program allows the CHCF-A program to achieve its goals while ensuring that the level of support is not excessive or wildly disparate across companies and avoids imposing an undue burden on California ratepayers who contribute to the fund.[35]

Sierra argues that the Commission should not require small independent telephone corporations to adhere to FCC standards for operating expense limits in their GRC, (citing OP 7 of D.21-06-004 at 43), reasoning that federal restrictions on recoverable expenses were not designed to apply to intrastate operations, and that their imposition on intrastate expenses results in arbitrary exclusions of expenses that are necessary for Sierra to provide regulated telephone service in California. Sierra similarly contends that the Commission's use of the FCC's "corporate expense cap" (citing OP 6 of D.21-06-004 at 43), does not account for the high cost of living in California or the intensive regulatory environment in which Sierra operates.[36]

5.1.2. Sierra's Proposed Corporate and Operating Expenses

As noted above, the Commission utilizes the NECA number[37] to determine the inflation factor applicable to Sierra's corporate and operating expenses and to determine whether Sierra's proposed corporate and operating expenses are within the FCC corporate and operating expense caps adopted in D.21-06-004. Sierra states that its corporate expenses and overall operating expenses are calculated in accordance with the Commission's "corporate expense cap" and "operating expense limitations."

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35 D.21-06-004 at 23, fn 62 citing D.14-12-084 at 28.

36 *See* Application at 11-12.

37 *See* 47 CFR § 54.1305

Sierra states that while its intrastate corporate expenses for 2023 are anticipated to be $2,136,348, the corporate expense cap restricts the recoverable portion of those expenses to $1,558,268.18.[38] Sierra projects its actual intrastate operating expenses for 2023 to be $10,055,279.[39] Sierra used Gross Domestic Product Consumer Price Index (GDP-CPI) factors from the Congressional Budget Office reports to determine the corporate expense cap amount for TY 2023.[40] Sierra estimates its operating expenses by applying GDP-CPI factors projected by the Congressional Budget Office to 2021 data.

Cal Advocates used NECA GDP-CPI factors for 2021-2023 which appear in the Department of Commerce's reports – a source approved by the Commission and accepted by the FCC.[41] Cal Advocates calculates Sierra's intrastate corporate expense cap amount to be $1,495,672 and recommends adoption of this amount.

Cal Advocates notes that Sierra's projected operating expense budget for TY 2023 is smaller than the FCC determined operating expense cap. Therefore, Cal Advocates recommends that the Commission adopt an operating expense budget of $9,939,332,[42] which Cal Advocates calculates by using the most recent 2021 data and NECA's inflation factors of 1.013 to adjust the 2021 amount to the 2022 level and 1.042 to adjust the 2022 amount to the 2023 level.

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[38] *See* Application at 12, citing STC-6, Duval Opening Testimony at 32.

[39] *Id.* Application at 12, citing STC-6, Duval Opening Testimony at 37-38, Exhibit CD-1 (Operating Expenses (2021 through 2023).

[40] *Id*.

[41] *See* Opening Testimony of Cal Advocates, Bixia Ye at 1-3 and 1-4.

[42] *See* Opening Brief of Cal Advocates, Summary of Recommendations at vi.

The difference between Sierra's and Cal Advocates' estimates of operating expenses, is primarily due to the difference in the GDP-CPI inflation factors that each use.

5.1.3. Discussion

We adopt the Cal Advocates proposed intrastate corporate expense cap amount of $1,495,672 and operating expense budget of $9,939,332 (before depreciation) for TY 2023.

Both Sierra and Cal Advocates calculated a corporate expense cap that exceeds the estimated corporate expenses for TY 2023, therefore, no reduction in corporate expenses is required. In addition, while Sierra calculated an operating expense cap below their estimated TY 2023 operating expenses, Cal Advocates notes that, based on D.21-06-004, the lesser of the calculated cap or total operating expenses, becomes the operating expense cap.[43] Therefore, Sierra's operating expenses are within the calculated operating expense cap.

Sierra explained that it used the Congressional Budget Office's projected factors for 2021 through 2023 because NECA GDP-CPI factors for years beyond 2020 were not available.[44] However, we question the validity of Sierra's claim that NECA inflation factors were not available, when Cal Advocate's witness used NECA, and Department of Commerce published GDP-CPI inflation factors for 2021-2023.[45]

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[43] *See* Opening Testimony of Cal Advocates, Bixia Ye at 2-9.

[44] *See* Opening Testimony of Robert Duval at 38.

[45] *See* Opening Brief of Cal Advocate at 13 fn. 63 citing Exh. PAO-03, Testimony of Ms. Bixia Ye, at 1-2: "NECA uses the most recent two years' GDP-CPI percentage change released by the U.S. Department of Commerce to grow the GDP-CPI in the calculation of corporate expense cap." As such, we agree with Cal Advocate that the Commission should adopt the GDP-CPI factor of 1.23056868 in the calculation of corporate expense cap and the cumulative inflation adjustment of 1.1667 to calculate Sierra's operating expense cap for TY 2023.

5.2. Depreciation Expense

Sierra initially fully depreciated eight plant accounts by December 2022.[46] Cal Advocate argued that RUS loan projects that are not likely to be completed and put into service during TY 2023, should be removed from plant-in-service. This adjusts the intrastate depreciation expense for TY 2023 to $6,173,711.[47]

In its Opening Brief, Sierra agreed with Cal Advocates that "[d]epreciation expense is a function of plant in service, the rate at which various classes of plant are expected to depreciate (service lives), and estimated salvage value," and concurred with Cal Advocates' computed depreciation expense which applies those rates to Sierra's proposed plant in service for the TY. Sierra calculated that Cal Advocates' proposal resulted in a "total company" depreciation expense for the 2023 TY of $13,829,950.236 – and an intrastate depreciation expense component of $7,286,033.[48] However, in its Reply Brief, Sierra stated that it did not fully agree with Cal Advocates' calculation of depreciation expense because Cal Advocates' figures rely on extensive plant disallowances in 2022 and 2023. In Sierra's opinion, Cal Advocates' plant disallowances make the depreciation expense $1,112,322 lower than it should be. Therefore, while Sierra contends that the depreciation expense should properly be $7,286,033, to reflect the diminution in value of Sierra's plant through the end of the 2023 TY, Cal Advocate contends that the depreciation expense should be $6,173,711.[49]

In view of the testimony of Sierra's President Ms. Cindy Huber, that Sierra had not yet drawn any proceeds from the approved RUS loan and that, at the

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46 *See* Cal Advocates Exh. PAO-03 at 3-2 through 3-7.

47 *See* Cal Advocates Opening Brief at 19, fn 94 and attachment A.

48 *See* Sierra Opening Brief at 44.

49 *See* Cal Advocates Opening Brief at Attachment A and Cal Advocates Reply Brief at 5.

time of hearing "none of the projects have been completed," we find it reasonable to accept Cal Advocate's calculation of depreciation expense at $6,173,711.

5.3. Taxes

A small telephone corporation's revenue requirement must include a reasonable forecast of the tax liabilities that it expects to experience during the TY.[50] Sierra estimates its 2023 intrastate tax liabilities to be $1,109,585, including the amortization of excess deferred income taxes.[51] To reach its intrastate tax liabilities figure, Sierra assumes an intrastate rate base of $47,348,968 and a cost of capital figure of 9.22 percent (assigned to Sierra pursuant to D.16-12-035), to reach a figure of $4,365,575 in intrastate net income during 2023.[52] The parties further stipulated that once the Commission subsequently adopts a cost of capital decision applicable to each of the Small LECs pursuant to the consolidated application filed September 1, 2022,[53] Sierra will determine whether there is an adjustment to the 9.22 percent cost of capital utilized in this proceeding. If an adjustment is required, Sierra will implement the adjustment and update the revenue requirement and CHCF-A subsidy adopted in this

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[50] Pub. Util. Code § 275.6(b)(5)

[51] *See* Application at 19, citing 26 U.S.C. § 11 (21 percent federal corporate tax rate); Calif. Rev. & Tax Code § 23151(e) (8.84 percent California corporate tax rate).

[52] *See* February 3, 2022, Motion to Defer Review Cost of Capital in this proceeding, indicating that Sierra, along with the other Small LECs, will file a consolidated application addressing the cost of capital by September 1, 2022. Cal Advocate stipulated that the 9.22 percent cost of capital cost should be utilized to calculate Sierra's return on rate base in this proceeding.

[53] *See* A.22-09-003 "Application of Calaveras Telephone Company (U1004C) Cal-Ore Telephone Co. (U1006C) Ducor Telephone Company (U1007C) Foresthill Telephone Company (U1009C) Kerman Telephone Co. (U1012C) Pinnacles Telephone Co. (U1013C) The Ponderosa Telephone Co. (U1014C) Sierra Telephone Company, Inc. (U1016C) The Siskiyou Telephone Company (U1017C) Volcano Telephone Company (U1019C) for a Determination of Applicants' Cost of Capital for Ratemaking Purposes."

proceeding through an advice letter filed with the Commission's Communication Division.[54]

5.3.1. Property Tax Calculation

Sierra estimates property taxes for 2021 through 2023 based on Telecommunications Plant in Service (TPIS) of prior years. [55] This includes an estimated growth factor and average annual TPIS.

Cal Advocates argues that since the California Board of Equalization (BOE) assesses property taxes, it is appropriate to utilize BOE's methodology to estimate property taxes for Sierra. Cal Advocates notes two "mistakes" in Sierra's property tax estimation: Sierra uses the average TPIS, not TPIS as of January 1 of each year, and Sierra includes software programs in TPIS.[56]

While the calculated difference is minor, we find it reasonable to accept Cal Advocates' property tax figure for Sierra for 2023 since it more closely aligns with the BOE's property tax methodology.

5.3.2. Effect of Broadband Imputation on Tax Calculation

As discussed below, in D.21-04-005 (affirmed by D.21-08-042), the Commission determined that positive net revenue associated with retail broadband services provided by the Small LEC or an Internet service provider ("ISP") affiliate of that Small LEC (for the calendar year preceding the application filing) shall be imputed in the determination of CHCF-A support.

Sierra and Cal Advocate disagree about the calculation of taxes related to imputed broadband revenue.

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[54] *See* assigned Commissioner's Scoping Memo and Ruling (Scoping Memo) dated March 1, 2022 at 3.

[55] See Opening Testimony of Robert Duval at 45.

[56] See Opening Testimony of Cal Advocates, Bixia Ye at 4-3.

Sierra contends that, after determining the net-to-gross CHCF-A draw, it should subtract broadband net revenue from the calculated draw (*i.e.*, Sierra calculates income taxes before imputing broadband revenues). Sierra contends that its method is appropriate because broadband imputation is a dollar for dollar decrease and part of rate design, not the revenue requirement. [57]

Cal Advocates argues that Sierra's methodology overstates its tax liability. Imputed net retail broadband revenues are already "net" of state and federal income taxes and should be excluded from taxable income in Sierra's Results of Operations because including the imputation of net positive retail broadband revenue overstates Sierra's state and federal income tax expenses, which increases Sierra's revenue requirement. [58]

Instead, Cal Advocate uses a series of algebraic equations to calculate Sierra's income taxes after imputing broadband revenues.[59]

We agree with Cal Advocates reasoning that, if taxes are estimated on a CHCF-A draw that is calculated before broadband revenues are imputed, tax liability will be overstated. Including the imputation of net positive retail broadband revenue overstates Sierra's state and federal income tax expenses, which increases Sierra's revenue requirement.

6. Rate Base

In D.21-06-004, the Commission determined that, to support transparency and to ensure that cost recovery is appropriate, small telephone companies should use the rate base amount from NECA's latest cost study as a starting point of a rate base for each GRC TY. The Commission reasoned that, because

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[57] *See* Sierra Exhibit 7-C, Rebuttal Testimony of Chad Duval at 40, lines 8-21.

[58] *See* Cal Advocates September 6, 2022 Opening Brief at 5.

[59] *See* Cal Advocates Exh. PAO-01-C at Attachment 1.

NECA's rate base figures are at least two years behind a TY, adjustment could be made for new additions, closure of plants, or other changes that have occurred since the year of the NECA cost study. For this reason, the Commission concluded that the NECA cost study is a reasonable method for forecasting GRC TY rate base because the recorded NECA cost study rate base amounts are comparable to the GRC forecasted amounts, with an average difference of 1.77 percent. The NECA cost study includes total company rate base, which is then allocated between the intra- and the interstate jurisdictions. Small telephone companies were directed to allocate the same amount of rate base to the intrastate jurisdiction as shown in the NECA cost study. This approach would ensure proper jurisdictional allocation. The NECA cost study also incorporates the most recent recorded level of plant additions and depreciation, which will help streamline the GRC process. Therefore, small telephone companies must submit their most recent NECA cost study, including all data relating to the intrastate rate base, with their GRC application. Any changes to rate base "including plant additions or closures" shall be subject to a reasonableness review.

6.1. Plant Construction Expense

Sierra seeks to include plant additions which it says are necessary to satisfy forward-looking customer demand, comply with regulatory requirements, and fulfill state universal service policy objectives.[60] Toward this end, Sierra states that it is pursuing fiber-focused upgrades to its network, explaining that fiber to the premises (FTTP) is necessary to both provide universal broadband access with forward-looking speed capabilities and to

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60 *See* Application at 15.

reduce Sierra's costs in maintaining aging copper facilities. As Sierra notes, the Commission must include all reasonable investments necessary to provide for the deployment of broadband-capable facilities in the rate base of small independent telephone corporations. In computing rate base, the Commission must also approve investments that are reasonably necessary to provide regulated voice services and access to advanced services.[61]

The Commission agrees, in principle, with Sierra's intent to upgrade of its network to achieve FTTP architecture of 25/3 Mbps for approximately 42 percent of its customers (which it estimates will add 4,500 additional customer locations in 2022 and 2023 and will permit Sierra to achieve speeds of 100 Mbps download and 25 Mbps upload. Sierra's witness Ms. Huber, provided extensive testimony about Sierra's plans to use Rural Utility Service (RUS) loan funds approved in July 2021 to fund last mile broadband deployment projects such as PON deployments and power upgrades.[62] However, because plant-in-service should only be included within rate base calculations when used, Cal Advocates challenges Sierra's inclusion of the total amount of the RUS loan proceeds within its plant-in-service amount for TY 2023.

We agree. During cross-examination, Sierra witnesses conceded that Sierra has not yet drawn from the RUS loan funds for infrastructure projects. Sierra witnesses credibly testified that it has used proceeds for consultant/engineering cost expenses. We find merit in Cal Advocate's observation that is unlikely that all of Sierra's anticipated projects will be completed and in use during the TY 2023. As previously noted, the

[61] Pub. Util. Code § 275.6(b)(2) and Pub. Util. Code § 275.6(c)(2)

[62] *See* STC-1C, Confidential testimony of Cynthia Huber, Volume 2 at 38-49.

Commission's obligation in a GRC proceeding, is to determine what is reasonable, and to disallow costs that are unreasonable.

Sierra's plant in service should not include the entire RUS loan total of $40.228 million when only a portion of the proceeds have been utilized. We adopt Cal Advocates' recommendation to reduce Sierra's intrastate plant in service for TY 2023, and will instead use $159,651,715, Sierra's average balance of plant-in-service for TY 2023.[63]

6.2. Deferred Income Tax Calculation

Sierra computes its estimated deferred income tax for TY 2023 using data for 2021 (the last year available) according to the Commission's long-established methodology.[64] Sierra calculated deferred income taxes as a percentage telecommunications plant in service.

We approve this approach here, as we have in each of Sierra's previous rate cases, as well as other small LEC rate cases.[65] Using this approach, Sierra calculates an intrastate deferred tax figure of -$7,330,903.[66] (We note that Sierra's initial deferred tax figure may be subject to adjustment as a result of the Commission's recommendations to adjust other line items.)

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[63] *See* Cal Advocate RUS Project Timeline dated July 14, 2022.

[64] *See* Sierra's September 30, 2022 Reply Brief at 16, fn. 83. citing Exh. STC-07 (Duval Rebuttal Testimony) at 26:8-10, 26:10-23 (unrebutted expert testimony confirming that the Commission used Sierra's methodology in "nine rate cases" previously adjudicated for rural telephone companies); *see also* D.11-05-032, Attachment I (Revised Res. T-17157 resolving Ducor 2009 rate case) at 11-12 (endorsing the use of a straightforward "ratio" of "average deferred income taxes" to "average plant in service" to compute deferred tax for the TY); RT at 700:19-25 (Ye) (Cal Advocates' witness admitting that Revised Res. T-17157 adopts Sierra's methodology); accord D.10-09-007 (Calaveras), Attachment I at 13; D.11-05-033, Attachment 1 (Cal-Ore) at 14, Res. T-17132 (Ponderosa) at 14.

[65] *Id.*

[66] *See* Exh. STC-07 (Duval Rebuttal Testimony), Exh CD-R1 at 3 (line 29), 37.

Cal Advocate argues that, to forecast Sierra's deferred income tax for TY 2023, the Commission should use the average percentage of the most recent four-year's annual average deferred income tax to the average net balance of Plant in Service account, excluding the value of Land account, from 2018 through 2021.[67] Although Cal Advocates concedes that the Commission has historically used calculation method that Sierra uses, Cal Advocate contends that its own "independent calculations demonstrate that this methodology is problematic" and that "the Commission should not continue to use such a problematic method.

We agree with Sierra that, because Cal Advocates' approach has no foundation in Commission precedent, it would be inequitable to Sierra and prejudicial to other small LECs to entertain this proposal here. Rather, we agree with Sierra that the appropriate forum to address this and other methods that may be considered "problematic", would be within a rulemaking proceeding (such as a future CHCF-A proceeding) wherein the Commission would give notice to other stakeholders that it is proposing adoption of a new set of ratemaking standards. Thus, the Commission has applied Sierra's methodology for calculating deferred taxes and has updated the rate base amount included in that calculation to reflect the rate base adopted in this decision.

7. The California High-Cost Fund-A (CHCF-A) Subsidy

Pub. Util. Code Section 275.6 requires the Commission to minimize telephone rate disparities between rural and metropolitan areas to keep rates affordable in areas with lower population densities. The CHCF-A subsidy provides supplemental revenues to small rural telephone companies. Without

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[67] *See* Opening Brief of Cal Advocate at 18, fn 87 citing Exh. PAO-03, at 4-5 to 4-7.

this subsidy, telephone companies would have to charge such a high fee for basic exchange access line service rates in rural areas, that universal service access for residents of those areas would be threatened. The CHCF-A subsidy supports small independent telephone companies (including Sierra) to allow rural residents to stay connected to essential services to maintain public health and safety.[68] The Commission and the State of California have deemed such access to reliable, affordable telephone service to be critical to public safety within rural communities, and beneficial to the state as a whole.

The CHCF-A program is funded by a surcharge assessed on revenues collected from end users of intrastate telecommunications services. The Commission periodically reviews the program fund levels and adjusts the surcharge rate to ensure the program is sufficiently funded. All telephone corporations are currently required to assess the CHCF-A surcharge remittance rate of 0.70 percent. D.22-10-021 adopted a new surcharge methodology to fund California's Universal Service Public Purpose Programs (PPP). Effective April 1, 2023, a customer's bill will show a single consolidated surcharge amount for all six PPPs and the CHCF-A fund will receive 7.54 percent of the total surcharge amount of $1.11 per access line.

In administering the CHCF-A program, the Commission must "ensure that rates charged to customers of small independent telephone corporations are just and reasonable and reasonably comparable to rates charged to customers of urban telephone corporations."[69] In the Commission's D.14-12-084 and updated

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[68] Pub. Util. Code § 275.6(c)(1) authorizes the Commission to set rates charged by small telephone companies in accordance with Sections 451, 454, 455 and 728.

[69] Pub. Util. Code § 275.6(c)(3). Historically, "comparable" has meant that target rates for residential customers are no more than 150 percent of basic service rates for California's urban telephone customers. The "150 percent formula" was originally established in

in D.21-06-004, in its CHCF-A rulemaking proceeding, the Commission deemed presumptively reasonable and non-rebuttable a small telephone company rate range of $30.00 to $40.00, for basic residential service, inclusive of additional charges such as federal and state fees and surcharges.

Sierra requests a CHCF-A draw of $12,053,636 for TY 2023. [70]

7.1. Constitutionality of Commission's CHCF-A Program

Sierra's contention that "some of the Commission's regulations materially conflict with constitutional and statutory standards," lacks merit.[71]

Sierra argues that some of the regulatory requirements applicable to CHCF-A (pursuant to Phase 2 of the CHCF-A rulemaking[72]) conflict with constitutional requirements, as they artificially understate Sierra's revenue requirements and institutionalize shortfalls in the revenue needed to fulfill Sierra's revenue requirement. Sierra contends that the Commission's current rules deny Sierra of a reasonable opportunity to achieve earnings needed to provide adequate service to its subscribers, cover its costs and tax liabilities, and fairly compensate its investors.

D.91-09-042, and the formula has been used in part to evaluate the reasonableness of rates charged to customers. In D.10-02-016, the Commission modified the 150 percent formula so that the small ILECs were no longer required to charge 150 percent of the basic urban rate to qualify for CHCF-A support, instead setting the basic service rate for residential customers at $20.25 per month. *See* D.10-02-016, Ordering Paragraph 3.

[70] Application at 4. Sierra initially requested a draw of $13,263,382, which it updated to $12,053,636 in its Reply Brief dated September 30, 2022.

[71] *See* Application at 6. We note that this argument has previously been raised by Sierra and other Small LECs, and rejected by the Commission in D.21-08-042.

[72] *See* Application at 8, where Sierra references the Commission's "Broadband Imputation Decision," D.21-04-005, which authorizes reductions in CHCF-A based on the net profits achieved by ISP affiliates of small independent telephone corporations.

However, when evaluating Sierra's revenue request, the public interest requires the Commission to consider not only Sierra's ratepayers and customers, but the interests of every carrier that contributes to the CHCF-A from which Sierra is requesting funding. The Commission will assess whether Sierra has justified its revenue proposals, and when it has not, Sierra's proposal must be disallowed.

7.1. Legal and Policy Considerations

In D.21-04-005, the Commission mandated that, in any rate case filed by Sierra or any other small independent telephone corporations ("Small LECs") drawing support from the CHCF-A, positive net revenue associated with retail broadband service provided by the Small LEC or an Internet service provider ("ISP") affiliate of that Small LEC (for the calendar year preceding the application filing) shall be imputed in the determination of CHCF-A support.[73] The Commission affirmed its broadband imputation mandate in D.21-08-042, after a group of small LECs and parties to the CHCF-A rulemaking, including Sierra, filed an application for rehearing of D.21-04-005.[74]

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[73] *See* D.21-04-005 and D.21-08-042 "the Broadband Imputation Decisions", which were adopted in Phase 2 of the California High Cost Fund-A ("CHCF-A") R.11-11-007, and which include directives regarding the implementation of "broadband imputation" in this and all small LEC GRCs.

[74] On September 22, 2021, the Small LECs and their affiliate ISPs filed a petition for writ of review of the Broadband Imputation Decisions, challenging the Commission's statutory, constitutional, and jurisdictional bases for imposing the broadband imputation mandate. On January 7, 2022, the Court of Appeal of the State of California in and for the Fifth Appellate District, issued a writ of review ("Writ Order") of Commission Decision Nos. 21-04-005 and 21-08-042. Oral argument before the Court of Appeal is likely to be scheduled in December 2022.

7.2.1. Relevance of Retail Broadband Revenues and Quality and Reliability of Broadband Service to CHCF-A

During the pendency of this proceeding, Cal Advocates sought, and Sierra initially refused to provide, information related to the service quality of the broadband service offered by Sierra's ISP over Sierra's broadband capable network. Cal Advocates contends that it has a clear statutory and regulatory right to the information that it seeks under Pub. Util. Code § 275.6(a), which gives the Commission regulatory authority to maintain the CHCF-A Administrative Committee Fund program. Cal Advocate reasons that because the Commission is required, when administering the CHCF-A program, to promote customer access to advanced services and deployment of broadband-capable facilities in rural areas that are reasonably comparable to that in urban areas, it is necessary for the Commission to evaluate Sierra's compliance with D.21-04-054 and D.14-12-084. Cal Advocates contends that such an evaluation requires it to have sufficient information to conduct a reasonableness review of Applicant's broadband funding requests to support its recommendations to the Commission regarding Applicant's compliance with the relevant subsections of Pub. Util. Code § 275.6. It argued that information about the service quality of the broadband service provided by Sierra's ISP to customers would assist the Commission to understand the service quality customers experience, which in turn directly impacts the broadband connectivity necessary for customers to pursue economic, health, and educational opportunities provided by modern internet access. Cal Advocate argued that to complete such a compliance review, the Commission should have access to documents such as Sierra's ISP affiliate's financial statements, detailed general ledgers, trial balance, and schedules supporting the broadband imputation amount reported to the Commission. [75] Cal Advocates also contended that Sierra should be required to submit annual reports and detailed documents that support its reported broadband revenue imputation amount, which Cal Advocate reasons is useful in an oversight capacity as well as in examination of future GRCs to ensure that Sierra's use of CHCF-A subsidies is prudent and consistent with providing safe, reliable service to customers at just and reasonable rates.

Sierra argues that Cal Advocates has no right to information concerning the separate operations of Sierra's ISP affiliate such as operational data pertaining to the manner in which Sierra's ISP interacts with customers in connection with its provision of unregulated broadband Internet access service. Sierra argues that Cal Advocates' requests reflect an attempt to examine, measure, and regulate the level of service quality that Sierra's ISP provides to its customers, using some of the same metrics that the Commission currently uses to assess service quality for voice customers, which Sierra contends is beyond the Commission's jurisdiction, unrelated to public utility ratemaking, and outside the scope of Sierra's Application.[76]

The assigned ALJ did not find Sierra's arguments convincing. Noting that Sierra acknowledges in its application that its proposals advance important California policy objectives, including efforts to bridge the "digital divide" and foster enhanced broadband deployment in rural areas of California, the ALJ reasoned that broadband service quality, and funding anticipated toward

[75] Cal Advocates filed a March 11, 2022, Motion to Compel Data Responses by Sierra related to the service quality of the broadband service offered by Sierra's ISP over the Applicant's broadband capable network

[76] *See* Sierra's Opposition to the Motion to Compel dated March 21, 2022.

proposed upgrades to broadband infrastructure that will prepare Sierra for evolving state goals, and current and anticipated customer needs are an appropriate element of its revenue requirement and rate design, and determined that Cal Advocates is correct that D.14-12-084 requires the Commission to (as part of a small telephone corporation's GRC consider factors such as the presence of anchor institutions, network redundancy, public safety and service quality when evaluating broadband-capable network investments. [77] Noting the stated objectives within Sierra's application, the ALJ did not find convincing the distinction that Sierra attempts to make between broadband services themselves and the mention of "broadband-capable facilities," and "access to advanced services" that such facilities provide within the language of Pub. Util. Code Sections 275.6(c)(5) and (6).

We agree that Sierra's arguments are not convincing. Using reasoning that we employed (in Sierra's favor) to uphold Commission precedent on calculation of taxes, we note that D.21-04-005 and D.14-12-084, represent clear Commission precedent that Sierra should update the Commission on the status of its imputable net positive retail broadband revenues in preparation for Sierra's GRC[78]. Similarly, the documentation that Cal Advocate identifies is important because they assist the Commission's Communications Division in its evaluation of the reliability and reasonableness of the broadband service that Sierra's affiliate provides. [79] This information is useful in an oversight capacity as well as

[77] *See* ALJ's May 31, 2022, Ruling Granting the Public Advocates Office Request For Order Compelling Responses From Sierra Telephone Company.

[78] *See* D.21-04-005 at 22.

[79] *See* Opening Brief of Cal Advocate at 6, citing Exh. PAO-01, at 2-1. 32 Testimony of James Ahlstedt, Hearing Transcript (Confidential), Vol. 4, at 584, ln. 2-12. 33 Testimony of

in examination of future GRCs to ensure that Sierra's use of CHCF-A subsidies is prudent and consistent with providing safe, reliable service to customers at just and reasonable rates.

7.2.2. Means Test for CHCF-A

The Commission limits the CHCF-A support to amounts which would provide no more than either: 1) a utility's authorized intrastate rate of return, or 2) the utility's current funding level for the year for which CHCF-A is being requested, whichever is lower. The foregoing is determined by using a "means test."[80] The means test is based, in part, upon at least seven months of recorded data annualized which can then be compared to the utility's forecasted intrastate rate of return based upon its adopted results of operations for a particular year.

The CHCF-A support for a utility's TY[81] is determined in its GRC decision, and any renewal of the CHCF-A support for subsequent calendar years shall be in accordance with D.91-09-042. The Commission's recommendation for Sierra's TY 2023 CHCF-A support is $7,225,106 as reflected in the Results of Operations in Appendix A to this decision. Pursuant to D.91-09-042, "the means test shall not be applied to the determination of a small LEC's CHCF-A funding level following 12 months after a decision or resolution is rendered by the Commission in a LEC's general rate review proceeding."[82]

James Ahlstedt, Hearing Transcript (Confidential), Vol. 4, at 584, ln. 2-12. 34 Testimony of James Ahlstedt, Hearing Transcript (Confidential), Vol. 4, at 585-88.

[80] *See* D.91-05-016 as modified and clarified by D.91-09-042.

[81] In small LEC GRC proceedings, the TY is the year immediately following issuance of the Commission's decision (*e.g.,* 2023 would be the TY for this decision, which is anticipated to be issued in December 2022.)

[82] *See* D.91-05-016 as modified and clarified by D.91-09-042, Ordering Paragraph 2.

Commission staff will rely upon the Results of Operations set forth in Appendix A to determine CHCF-A support, as permitted by D.91-09-042. The Results of Operations (Appendix A) shall be adopted for Sierra for all purposes consistent with established and historical GRC processes practiced by all Commission Industry Divisions, including Communications Division.

8. Confidential Testimony and Materials Under Seal

The parties submitted certain reports, exhibits and testimony designated as "confidential." The marking of these reports exhibits and testimony as "confidential" is deemed to be a request by each party for leave to file those reports and testimony under seal pursuant to Rule 11.4. The disclosure of confidential reports, materials and recommendations, sensitive financial data, operational and other privileged information could place the moving party in serious disadvantage or at unfair business disadvantage. Accordingly, the requests to place these materials under seal pursuant to Rule 11.4 are granted as set forth in the Ordering Paragraphs below.

Despite this, the figures herein and those on the Intrastate Results of Operations in Appendix A, should be made public and unredacted. Neither Pub. Util. Code § 275.6(e) nor any of the other authorities that Sierra cites[83] warrants their confidential treatment. Sierra argues that § 275.6(e) requires that the Commission keep as confidential "information regarding revenues derived from the provision of unregulated internet access service" provided to the Commission.

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83 Pub. Util. Code § 583; Cal. Gov. Code §§ 6254(k), 6255; Cal. Civ. Code § 3426.1(d); Cal. Evid. Code § 1060. We note that net positive broadband revenue imputation is different from the kind of information contemplated by the statutes. "Net positive" reveals nothing about gross revenues, the number of accounts, the cost of providing service, the rates paid by customers, etc. Further, neither D.21-04-005 nor D. 21-08-042 addressed the question of confidentiality.

Sierra claims that net positive broadband revenue imputation, and the CHCF-A support figure which would allow one to determine the net positive broadband revenue imputation figure, represent trade secrets. However, "net positive" reveals nothing about gross revenues, the number of accounts, the cost of providing service, the rates paid by customers, or other similarly protected information. Assuming for the sake of argument that the net positive broadband revenue imputation constitutes a trade secret,[84] within the context of this decision, in considering whether it is appropriate to redact any figures, the Commission would have to establish that the public interest served by non-disclosure outweighs the public interest served by disclosure.[85]

This GRC decision does not include the disclosure of Sierra's or Cal Advocates' confidential testimony and records (e.g., we do treat as "confidential" the financial statement required by Ordering Paragraph 2 in D.21-04-005).

In its September 6, 2022, Motion for Leave to File Confidential Version of Opening Brief Under Seal, Sierra claimed that release of certain figures could "inform marketing, operational, and build-out strategies by current or potential competitors of STI" and that "no countervailing public benefit would accrue from revealing the data." We disagree. Once records are furnished to the Commission, they become public records under the California Public Records Act.[86]

Pub. Util. Code § 275.6(c)(7) requires the Commission to "[e]nsure that support is not excessive so that the burden on all contributors to the CHCF-A

84 The trade secret privilege is conditional and may be defeated if allowing the privilege will work injustice. See Cal. Civ. Code § 1060; also D. 20-12-021 at 25-26.

85 Cal. Govt. Code § 6255(a).

86 Cal. Govt. Code §§ 6250, *et seq.*

program is limited." Transparency requires that the figures contained in the Results of Operations, particularly the adopted CHCF-A support amounts, be disclosed to the public. All California ratepayers contribute to the CHCF-A and if the support amounts remain confidential the public cannot evaluate if the support to any specific company, such as Sierra, is excessive. Furthermore, Small LECs, including Sierra, may request adjustments to their CHCF-A support each year. If the CHCF-A support amount adopted in this or any GRC decision is s confidential, then this would be inconsistent with the requirement that an annual support resolution must be released for public comment.

9. Categorization and Need for Hearing

In Resolution ALJ 176-3497, dated November 18, 2021, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were necessary. This decision confirms the categorization.

10. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Pub. Util. Code and comments were allowed under Rule 14.3. Comments were filed on ________.

11. Assignment of Proceeding

John Reynolds is the assigned Commissioner and Patricia B. Miles is the assigned ALJ in this proceeding.

Findings of Fact

1. On November 1, 2021, Sierra filed this GRC Application seeking to update its intrastate rates and charges, intrastate revenue requirement, establish a rate design and increase its draw from the CHCF-A.

2. The Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were necessary.

3. Cal Advocates filed its protest to the Application on December 1, 2021.

4. On January 18, 2022, a PHC was held to discuss issues of law and fact and there was agreement that there would be need for evidentiary hearings.

5. A Scoping Memo was issued on March 1, 2022, setting forth the issues to be determined.

6. The parties stipulated that, pursuant to D.16-12-035, Sierra would utilize a cost of capital figure of 9.22 percent in this GRC.

7. Sierra and Cal Advocates served direct and rebuttal testimony of witnesses prepared to testify in support of their respective positions.

8. Sierra and Cal Advocates engaged in significant discovery and data exchange, analysis of each other's positions and arguments, and several days of evidentiary hearing.

9. RUS loan funds were approved for Sierra in July 2021.

10. Sierra used RUS funds for consultant and engineering expenses but had not commenced infrastructure projects at the time of hearing, in August 2022.

11. In D.21-06-004, the Commission affirmed the use of the FCC's corporate expenses cap mechanism for calculating and determining a reasonable level of corporate expenses for telecommunications carriers drawing from CHCF-A.

12. In D.21-06-004, the Commission determined that the NECA cost study is a reasonable method for forecasting GRC Test Year rate base.

13. In D.21-04-005, the Commission mandated that in any rate case filed by small LECs drawing support from the CHCF-A, positive net revenue associated with retail broadband service of the ISP affiliate of the small LEC shall be imputed in the determination of CHCF-A support.

14. Based on our review of all the information in the record, we can independently determine and adopt the figures contained in the Results of Operations for Sierra for the TY 2023 (Appendix A).

15. Appendix A reflects an overall revenue requirement of $20,162,135 for Sierra for TY 2023.

16. Sierra's TY 2023 CHCF-A support of $7,225,106, reflected in Appendix A has been calculated in accordance with the means test and D.91-05-016 as modified by D.91-09-042.

17. It is appropriate to apply NECA's most recent inflation factors to adjust Sierra's proposed corporate operations expense budget of $ 10,055,279 to $9,939,332.

18. Sierra's proposed intrastate depreciation expenses of $7,286,033 have been reduced to $6,173,711, because Sierra's capital projects have not yet commenced and are not completed.

19. A six percent increase in Sierra's basic residential rates (from $25.00 to $26.50, exclusive of surcharges, fees and taxes), if approved, is within the $30 to $40 range that the Commission deemed just and reasonable for small telephone corporations in D.21-06-004.

20. A ten percent increase in Sierra's basic business rate (from $39.32 to $43.25, exclusive of surcharges, fees and taxes), is reasonably comparable to rates charged to customers of urban telephone corporations, as required by Pub. Util. Code §275.6.

21. Pursuant to Rule 11.4, the parties have requested to file under seal confidential materials, including reports, work papers and testimony.

22. Appendix A "Intrastate Results of Operations" are not confidential data.

Conclusions of Law

1. Sierra's application should be granted as modified by this decision.

2. Sierra's CHCF-A subsidy should be $7,225,106.

3. Sierra's proposed operating expense (excluding depreciation) of $10,055,279 should be reduced to $9,939,332.

4. It is reasonable to reduce Sierra's proposed intrastate depreciation expense of $7,286,033 to $6,173,711 because Sierra's capital projects have not yet been completed.

5. Sierra's overall intrastate revenue requirement for test year 2023 should be $20,162,135.

6. End user rates for residential customers should be set at $26.50 (exclusive of surcharges, fees and taxes) and for business customers at $43.25 (exclusive of surcharges, fees and taxes).

7. It is appropriate to authorize Sierra to submit a Tier 2 AL to the Commission's Communications Division within 30 days of the effective date of this decision to request any revenue differential between January 1, 2023 and the first day of the next month (resulting from the decision not being approved as of January 1, 2023), following the adoption of this decision (effective date), through the CHCF-A Fund. The AL should provide a calculation to "true-up" the revenue differential.

O R D E R

1. Sierra Telephone Company's application for review of intrastate rates and charges and rate of return for telephone services in California for Test Year 2023 is granted as set forth below and the accompanying Appendix A and Appendix B:

   a. Sierra Telephone Company's operating revenues shall be $ $19,051,743, not including net positive broadband revenues;

   b. As part of its operating revenues, Sierra Telephone Company's total California High Cost Fund-A adopted support shall be $7,225,106;

   c. Sierra Telephone Company's operating expenses shall be $16,113,043 before taxes;

   d. Sierra Telephone Company's rate of return shall be 9.22% until the Commission adopts an adjustment pursuant to A.22-09-003; and

   e. Sierra Telephone Company's rate base shall be $34,340,396.

2. Sierra Telephone Company shall modify its tariffs to charge:

   a. Basic residential rates of $26.50 per month (exclusive of surcharges, fees and taxes).

   b. Basic business rate of $43.25 per month (exclusive of surcharges, fees and taxes.)

   c. Call Waiting with Cancel Call Waiting, Call Forwarding (Variable, Busy and No Answer, and Remote Access), and Economy Voice Mailbox Services shall be included as part of basic rates for residential and business service as shown in Appendix B. Additional custom calling features will be charged at the existing rates shown in the tariff.

   d. Party Line Service shall be discontinued and party line customers shall be converted to residential service following proper notice.

e. Rates and California High Cost Fund A amounts shall be implemented on (Month) 1, 2023.

3. Within 5 days from the issuance of this decision, Sierra Telephone Company shall file a Tier 1 compliance Advice Letter with the Communications Division submitting modified tariffs to reflect adopted rates as reflected in Ordering Paragraph 1. Within seven days of the effective date of the advice letter, Sierra shall notify its customers of the revised tariffs and rates.

4. California High Cost Fund-A support amounts shall be effective on January 1, 2023.

5. Sierra Telephone Company is directed to submit a Tier 2 Advice Letter to the Communications Division within 30 days of the effective date of this decision to request any revenue adjustment resulting from this decision not being approved as of January 1, 2023, through the California High Cost Fund-A. The Advice Letter must provide a calculation to "true-up" the revenue differential for the Test Year 2023.

6. The requests (by motion or on the hearing record) by Sierra Telephone Company and the Public Advocate's Office of the Public Utilities Commission, that public and confidential versions of testimony and exhibits be received into evidence are granted. The confidential portions of the record are sealed, pursuant to Rule 11.5 of the Commission's Rules of Practice and Procedure. Confidential versions of testimony and exhibits are granted confidential treatment for a period of three years from the date of this order. During this three-year period, this information may not be viewed by any person other than Commission staff, except as agreed to in writing by the parties, or on the further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), the Assistant Chief ALJ, the Chief ALJ, the ALJ

then designated as Law and Motion Judge, or as ordered by a court of competent jurisdiction. If either party believes that it is necessary for confidential information to remain under seal for longer than three years, the party may file a motion providing a justification for a further extension at least 30 days before the expiration of the three-year period granted by this order.

7. All other motions filed by either party, which have not been ruled upon prior to this decision are deemed denied.

8. Application 21-11-005 is closed.

This order is effective today.

Dated December ____, 2022, at San Francisco, California.

APPENDIX A

Sierra Results of Operations Adopted Rates Draft

A22-11-005 SIERRA General Rate Case
Intrastate Results of Operations
ADOPTED RATES (DRAFT)

Line #	Description	SIERRA PROPOSED	PAO PROPOSED	ADOPTED
OPERATING REVENUES:		(A)	(B)	(C)
1	**Total Revenue**	**$23,639,114**	**$20,177,937**	**$20,162,135**
1.a	**Regulated Revenue**	**$10,475,086**	**$10,863,226**	**$11,826,637**
1.a (1)	Local Network Services	$5,624,143	$6,107,772	$6,460,765
1.a (2)	High Cost Loop Support	$3,886,647	$3,791,158	$4,401,576
1.a (3)	Intrastate Special Access	$33,957	$33,957	$33,957
1.a (4)	Interstate Switch Access	$216,229	$216,229	$216,229
1.a (5)	Miscellaneous	$714,139	$714,139	$714,139
1.a (6)	Less: Uncollectible Revenue	($29)	($29)	($29)
1.b	Net Positive Broadband Revenue Imputation	**$1,110,392**	**$1,110,392**	**$1,110,392**
1.c	CHCF-A	**$12,053,636**	**$8,204,319**	**$7,225,106**
OPERATING EXPENSES:				
2	**Operating Expense**	**$17,341,312**	**$16,113,043**	**$16,113,043**
2.a	Operating Expense (excluding depreciation)	$10,055,279	$9,939,332	$9,939,332
2.b	Depreciation Expense	$7,286,033	$6,173,711	$6,173,711
3	**Interest Expense**	**$379,196**	**$0**	**$0**
4	**Tax (excluding income tax)**	**$206,684**	**$207,046**	**$207,046**
4.a	Property Tax	$523,133	$523,495	$523,495
4.b	Amortized UEDTB	($316,449)	($316,449)	($316,449)
5	**Income Tax**	**$1,509,848**	**$680,283**	**$675,861**
5.a	State Taxable Income	$5,395,473	$2,431,007	$2,415,205
5.b	State Income Tax	$476,960	$214,901	$213,504
5.c	Federal Taxable Income	$4,918,513	$2,216,106	$2,201,701
5.d	Federal Income Tax	$1,032,888	$465,382	$462,357

RATE BASE:				
6	**Rate Base**	**$49,688,395**	**$34,463,818**	**$34,340,396**
6.a	Telephone Plant-in-Service	$176,731,981	$159,651,715	$159,651,715
6.b	Telephone Plant Under Construction	$0	$0	$0
6.c	Material & Supplies	$2,510,258	$2,510,788	$2,510,788
6.d	Working Cash	$1,006,190	$987,746	$987,746
6.e	Depreciation Reserve	($110,639,398)	($109,601,281)	($109,601,281)
6.f	Deferred Taxes	($7,330,903)	($6,495,417)	($6,618,839)
6.g	Post Retirement Benefits	($12,368,216)	($12,368,216)	($12,368,216)
6.h	Customer Deposits	$0	$0	$0
6.i	UEDTB	($221,517)	($221,517)	($221,517)
7	**Authorized Rate of Return**	9.22%	9.22%	9.22%
8	**Return on Rate Base**	**$4,581,270**	**$3,177,564**	**$3,166,185**
9	**Revenue Requirement**	**$23,639,114**	**$20,177,936**	**$20,162,135**
10	**CHCF - A Subsidy**	**$12,053,636**	**$8,204,319**	**$7,225,106**
11	**Rate of Return (for test)**	**9.22%**	**9.22%**	**9.22%**

APPENDIX B

New Sierra Basic Residential Service Rate and
Basic Business Service Rate

Appendix B: New Sierra Basic Residential Service Rate and Basic Business Service Rate

Basic Service	Rate Per Month	Included Custom Calling Features
Residence Service	$26.50	A. Call Waiting with Cancel Call Waiting B. Call Forwarding: 1. Variable 2. Busy and No Answer 3. Remote Access C. Economy Voice Mailbox
Business Service	$43.25	A. Call Waiting with Cancel Call Waiting A. Call Forwarding: 1. Variable 2. Busy and No Answer 3. Remote Access B. Economy Voice Mailbox